COPY

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

Separate Appendix to Petition for Writs of Certiorari (Rule 23f)

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Separate Appendix to Petition for Writs of Certiorari (Rule 23f)

Introductory Statement

Pursuant to Rule 23(f) Petitioners present this supplement as a separately bound appendix to their Petition for Writs of Certiorari to set forth, in full, the portions of the documents in the transcript which show the manner in which the federal questions were raised and the rulings of the state courts thereon.

1 Civil No. 18,130

In the

District Court of Appeal, State of California

First Appellate District—Division Two

In the Matter of the Estate of
JANET M. PECK,
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AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Appellants,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

APPELLANT'S PETITION FOR A REHEARING

[Filed: March 2, 1959]

[2] *To the Honorable Herbert C. Kaufman, Presiding Justice, Maurice T. Dooling, Jr., and Murray Draper, Associate Justices of the District Court of Appeal of the State of California, in and for the First Appellate District, Division Two:*

Pursuant to Rules 27-29, inclusive, of the Rules on Appeal, adopted by the Judicial Council effective January 1,

1959, Appellants, and each of them, petition for a rehearing of the above matter in this Court, and for the following additional relief therein:

(1) Correction of the misstatements of fact and law set forth in the opinion delivered on behalf of this Court on February 16, 1959, as herein noted;

(2) Modification of said opinion to include appropriate reference to any material statements of fact and of law and improperly omitted therefrom;

(3) Findings on Appeal, in accordance with the true legal interpretation of decedent's will, and as established by the record, as more particularly set forth in the motion now on file;

(4) Entry of a judgment reversing the decree of the Superior Court and directing distribution of decedent's estate to these Appellants.

A rehearing, and the granting of such additional relief, is sought on each of the following grounds:

I.

False Statements in the Opinion

The opinion delivered on behalf of this Court on February 16, 1959, contains the following false and [3] misleading statements of fact and of law prejudicial to the constitutional rights of Appellants:

First: The false representation at page 5, line 19, of the opinion, to the effect that decedent's will prohibits non-charitable activity:

> "In the instant case, the will restricts the use of trust property solely to charitable purposes."

Note: The page numbers in brackets denote the page numbers in the original documents.

There is no such provision in this will. At pages 98-99 of their Reply Brief, Appellants discuss the consequences of decedent's failure to use the word "charitable" or prohibit non-charitable activity.

Second: The half-truth at page 4, line 5, of the opinion, suggesting that decedent's trust has as its sole purpose

> "* * * to contribute toward world peace by providing education for newspapermen. (And that) Such a purpose is fundamentally educational."

The bequest to the Trustees at C. 4:19-26 is to help toward a correction of all of the conditions mentioned in the preamble; there are a number of trust purposes, several of which are neither educational nor charitable.

Third: At page 5, line 25, of the opinion, it is falsely represented that, subject to funds being available, decedent's Trustees are required to establish a professorship:

> "If the trust income is sufficient, the Trustees *are to establish* a professorship."

These words appear in the will in subparagraph (c) at R. 6:26-7:7 (A-9), and are accompanied by preca- [4] tory words expressing decedent's "hope" and "expectation" that this may be done. No legally binding obligation is imposed.

Fourth: In the opinion, at page 5, line 31 to page 6, line 4, there is a false denial of the grant of unlimited discretionary power permitting decedent's Trustees to select non-charitable objects and employ non-charitable means in seeking to carry out the trust purposes:

> "Contrary to appellants' argument, the trustees are not given an unlimited and uncontrolled discretion to select non-charitable objects, employ non-charitable means, or use the income for non-charitable purposes."

The preamble (C. 3:25-4:19) mentions several conditions which, by their very nature, are capable of being corrected

by activities and means which may be either educational or non-educational; charitable or non-charitable. After these recitals, there is a broad general grant of power:

> "I have therefore long cherished the hope that I might be able *to do something* to help toward the correction of *these conditions*, and *to that end* I hereby give . . . all of my estate . . . in trust for the *foregoing purposes* . . ."

The trust purposes are to correct designated conditions: not to carry on an educational program. The words used permit complete freedom of choice. It would not violate the will or constitute a breach of trust for the Trustees to resort exclusively to non-charitable and non-educational activities and means. [5] The only legal way to impose such a restriction is to include such a provision in the will, which was not done. It follows that by the very words of this will, the discretionary power of the Trustees is absolute and unlimited. This Court has no power to insert or establish a condition or limitation which the testatrix did not see fit to adopt. The statement above quoted at pages 5-6 of this Court's opinion is wholly false and should be corrected.

Fifth: There is a false statement at page 5, line 27, of the opinion, concerning the Founding Grant of the University:

> "Furthermore, under the terms of the Founding Grant, which is made applicable to *all bequests* to the Stanford Trustees by Section 10 of Article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes."

By means of this half-truth, it is inferred that decedent's trust must be charitable because the Trustees of Stanford are mentioned. The facts are to the contrary.

The evidence shows conclusively that the corporate body known as "The Board of Trustees of the Leland Stanford Junior University" has both charitable and non-charitable powers, and has acted in both capacities: in its non-charitable role, it organized and is now controlling and operating the affiliate known as "Stanford Research Institute", conducting a research business on a fee contract basis, for big business interests of many sorts; that the Stanford Board has power to [6] function in the same capacity in implementing the trust provided for in decedent's will.

It is likewise a fact that decedent's bequest is in trust and not a legacy; that the trust is not for the use or benefit of any department of the University; that it is a trust to establish a foundation and maintain it with the income of the estate; that decedent was in doubt as to the willingness of Respondent to accept, indicating that doubt by the following provision at C. 8:12-17:

> ". . . if my said Trustees and/or said The Leland Stanford Junior University accept *the gift for said Foundation of World Relations*, hereinabove provided for, they must do so subject to said charge (for annuities) on both the corpus of said trust estate and all income derived therefrom."

It was the right of decedent to require Respondent to accept this trust on her terms. It must accept subject to those terms or not at all. The terms imposed prohibit including the estate in the University Endowment.

The inference in the opinion that the Founding Grant of the University impresses a charitable character on the Peck trust is false and should be corrected.

Sixth: It is falsely represented at page 6, line 31, of the opinion that

"The testatrix intended to make a bequest to the governing body of Stanford University as the trial court found. The court's finding and distribution to the Board of Trustees of Stanford Uni- [7] versity was in accordance with Sec. 10 of Article IX of the State Constitution . . ."

There are twelve separate references in this will to the trustees as "*my* said trustees", indicating decedent's intent to have those appointed act as *her* trustees; not as trustees *for* the use or benefit of Stanford University, or any department thereof. Other clauses in the document are to the same effect. This statement in the opinion is completely false and should be corrected. See Appellants' Opening Brief, pp. 38-41.

Seventh: At page 4, line 29, of the opinion, there is a misleading statement that

"Bequests to promote peace and world understanding have been upheld in other jurisdictions."

There is no opinion in any jurisdiction sustaining such a trust where non-charitable or non-educational activities or means were permitted. See discussion on this point at pages 83-97 of Appellants' Reply Brief.

II.

Prejudice Resulting from Disregard of Material Facts

The opinion is unfair, prejudicial and in violation of the constitutional rights of Appellants in omitting appropriate reference to, and in rendering a decision in disregard of, the following material facts:

First: In failing to disclose and adequately discuss the fact that one of the conditions mentioned in the [8] preamble to decedent's will and to be corrected by her founda-

tion consists of the handicaps imposed by differences in environment and language in various nations; and that the decedent herself recognized and believed that these handicaps might be overcome "if the men and women whose vocation vests in them the power to mold public opinion make a conscious effort to that end."

Second: In declining to recognize and judicially notice that the "men and women in opinion molding vocations" constitute a large group of persons, including Senators, Congressmen, political leaders, leaders of political parties, candidates for political office, public relations counsel, advertising and public relations men, writers, lobbyists, Governors, members of State Legislatures, Chairmen and members of Committees of Congress and State Legislatures acting in fields which concern Foreign Affairs, World Relations and the molding of public opinion in reference thereto; officers, directors and key executives of business, labor, and other organizations engaged in political action and the formulation of public opinion; and also those Communist front organizations which advocate co-existence, appeasement and co-operation with Soviet Russia as a means of preventing war;

Third: In failing and refusing to recognize that the unlimited authority conferred on decedent's Trustees to correct conditions mentioned in the preamble of her will includes discretionary power to collaborate with, aid, and support, in any appropriate manner, any one, or more, or all, of these persons and organizations;

[9] *Fourth:* In failing to recognize and disclose that such aid, collaboration and support is, in its entirety, a non-charitable activity;

Fifth: In failing to recognize that another method authorized and permitted by decedent's will in aiding and supporting these men and women in opinion molding voca-

tions is to prepare, publish and distribute propaganda material for their use; that this is a non-charitable activity:

Sixth: In failing to recognize that another condition mentioned in the preamble to decedent's will is the lack of an understanding, by these opinion molders, of conditions in other nations; that this condition is one capable of being corrected, in whole or in part, by the publication and distribution of information bulletins and other materials, on a commercial basis, to a list of paid subscribers; that this is a non-charitable activity;

Seventh: In failing to recognize that one of the conditions mentioned in the preamble is the fact that the average citizen depends, for his knowledge of foreign affairs, on what appears in the newspapers; that this condition is capable of being corrected, in whole or in part, by decedent's foundation serving as a research agency and rendering assistance to commercial publishers in the textbook and book publishing field; that this is a non-charitable activity;

Eighth: That it is possible to increase the knowledge and understanding of newspaper editors and foreign correspondents respecting conditions in foreign countries by the commercial production, sale and distribu- [10] tion of instructional material dealing with those subjects, without setting up any course of study for any of them at a university; that this is a non-charitable activity.

III.

Denial of Due Process and Equal Protection of the Laws

The fundamental rights of Appellants have been violated in each of the following respects:

First: By the delivery of the false and misleading opinion filed on behalf of this Court on February 16, 1959;

Second: By the failure of this Court, as evidenced by said opinion, to apply to the case of these Appellants, the rules of interpreting decedent's will, which, under Probate Code Sections 100, 102, 104 and 106, must be applied to *all wills*, including those purporting to or alleged to establish charitable trusts;

Third: Without legal right or authority, this Court has applied a so-called presumption in favor of alleged or attempted charitable bequests, and by the use of such a presumption, it has discriminated against Appellants, as members of decedent's family, in disregard of recognized and accepted judicial standards, and without any jurisdiction or authority in law for taking, adopting, or maintaining such a position;

Fourth: This Court has disregarded the requirement of Probate Code Section 102 under which proper [11] legal force and effect must be given to all of the provisions of decedent's will. By lifting certain provisions out of context and disregarding others, the Court has sought to devise a theory whereby the invalid trust in this will might be sustained. In so acting, the Court has conducted itself in a lawless manner in disregard of the Constitution, Statutes, and precedents established in other cases. It has exercised a testamentary power not conferred on the judiciary.

Fifth: This Court has refused to recognize and apply the standard of equal justice under law, and the obligation of impartiality required by the decision of this Court in the Second District in *Estate of Kline*, 138 Cal. App. 514;

Sixth: Due process of law imposes on this Court a mandatory obligation to render a decision in accordance with precedents established by the Supreme Court in *Estate of Hinckley*, 58 Cal. 471, 509, *Estate of Sutro*, 155 Cal. 727, 738, and related cases.

[15] On each of the grounds herein set forth, Appellants submit that a rehearing should be granted; that the opinion of this Court should be modified in accordance with the law and the facts, and a judgment entered reversing the decree of the Probate Court.

Dated, San Francisco, California,
March 2, 1959.

AARON M. SARGENT,
Attorney for Appellants and Petitioners.

DOYLE & CLECAK
Of Counsel.

1 Civil No. 18,130

In the

District Court of Appeal, State of California

First Appellate District—Division Two

In the Matter of the Estate of
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Appellants.

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

ORDER DENYING HEARING

By the Court:

The Petition for a Rehearing filed in the above-entitled cause is hereby denied.

Dated March 18, 1959

Dist. Court of Appeal—First Dist. Filed Mar. 18, 1959.

LAWRENCE R. ELKINGTON, *Clerk*

1 Civil No. [illegible],130

In the

Supreme Court of the State of California

In the Matter of the Estate of
JANET M. PECK,
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Appellants,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

APPELLANTS' PETITION FOR A HEARING BY THE SUPREME COURT

[Filed: March 27, 1959]

[2] *To the Honorable Phil S. Gibson, Chief Justice, and Chairman of the Judicial Council, and to the Honorable Associate Justices, and Justice Pro Tem, of the Supreme Court of the State of California:*

Appellants respectfully petition and apply for the following relief:

First: Re-transfer of this appeal to the Supreme Court;

Second: A full and complete appellate review of this

case in accordance with accepted legal and judicial standards;

Third: An investigation of misconduct and irregularities in the District Court of Appeal;

Fourth: Issuance of necessary orders to secure Appellants' right to due process, equal protection of the laws, and a reversal of the decrees entered by the Probate Court.

Request for Assignment of Justice Pro Tem

Associate Justice Homer R. Spence, a member of Respondent "*The Board of Trustees of the Leland Stanford Junior University*", is disqualified herein because of his interest in the subject matter. Accordingly, the Chief Justice, as Chairman of the Judicial Council, is requested to provide for assignment of a Justice Pro Tem to secure the right of Appellants to have this application considered and acted on by a full panel of seven.

[3] *Status of the Record*

The opinion filed in the District Court of Appeal February 16, 1959, became final as to that Court on March 19, 1959. A rehearing petition filed March 2, 1959, was denied on the latter date. The period within which this Court may act under Rule 28(a) will expire April 19, 1959, in view of the intervening holidays.

Aside from the legal questions involved, the decision on this appeal depends on a correct legal interpretation of decedent's will. That document, which appears in the Clerk's Transcript at pages 3-9, is separately printed and bound in white cover, and will be cited herein as A-, with appropriate page references. Unless otherwise stated, all italics and other emphasis is ours.

Summary Statement of the Case

This is an appeal from Probate Court Decrees upholding a perpetual trust for a mixture of charitable and non-charitable objects. Such trusts violate the perpetuity clause in the State Constitution and the common law rule against discretionary non-charitable powers. By statute (Civ. Code Sec. 22.2), this principle has the force and effect of positive law and is the rule of decision in this state.[1] Trusts with these [4] discretionary powers were condemned and held invalid by the unanimous opinion of this Court in *Estate of Sutro*, 155 Cal. 727. The question is not whether such powers may in fact be exercised. It is only necessary to show that a prohibited power has been conferred. The rule is the same as that applied in cases involving Restraints on Alienation, or violation of the Rule Against Perpetuities.

Decedent's will violates these established rules by providing for creation of a Foundation to be set up after her death with charter purposes including both charitable and non-charitable objects, activities and means. The purposes of the Foundation are set forth in the Preamble to the will in Paragraph Second (A-5, 6). It is to be established to "do *something* to help toward a correction" of the following conditions:

> Handicaps caused by differences of environment and language of peoples of different races and nations, impeding human progress and leading to wars:

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[1] *Const.*, Art. XX, Sec. 9: "No perpetuities shall be allowed except for eleemosynary purposes." *Morice v. The Bishop of Durham*, 9 Vesey Jr., 399 at 405, invalidating a perpetual trust including discretionary power to devote the property to non-charitable purposes. *Political Code*, Sec. 4468, re-enacted as Civil Code Sec. 22.2, whereby the common law of England is made "the rule of decision in all courts of this state." *Estate of Hinckley*, 58 Cal. 457, at 508-509, recognizing the Bishop of Durham rule. Also, *Estate of Sutro*, 155 Cal. 727, at 734, adopting and recognizing this rule as a rule of property.

Failure of men and women in opinion molding vocations to make a conscious effort to use their power to overcome these handicaps;

A lack of understanding of these potential opinion molders, in respect to the economies, history, diplomacy and political backgrounds of the various countries of the world;

[5] An attitude on the part of our citizens toward "anything foreign" based almost entirely on what appears in the newspapers;

Woeful ignorance of these conditions on the part of members of editorial staffs and foreign correspondents of newspapers.

Neither the Foundation nor the Trustees are required to use educational means, either in whole or in part. It will be recognized that the conditions to which decedent refers are, by their very nature, capable of being corrected by either educational or non-educational; charitable or non-charitable means. The will contains no provision limiting the Trustees to activities which, in law are deemed charitable. The terms of the trust are so broad as to permit the conduct of almost any activity having any reasonable connection with any of the stated purposes. The Trustees are required to establish such a foundation and maintain it in perpetuity with net income of the estate. The residue is bequeathed as the corpus of a trust fund for that purpose.[2]

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[2]See Will at A-7, providing for the bequest to Trustees "to do something to help toward a correction of *these conditions*"; the trusteeship clause stating that the bequest is "in trust for the *foregoing* purposes, . . . and the implementing clauses, as follows:

"(a) My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes; and* my said Trustees *shall use* and apply the net income derived from said trust estate *for the maintenance of such Foundation.*"

The District Court of Appeal upheld this trust by an opinion misinterpreting the will, containing deliberately false statements of fact, omitting reference to other facts material to the issues, and engaging in [6] misconduct of such character as to deprive Appellants of due process and equal protection of the laws. The opinion containing these falsehoods, half truths, and misrepresentations, was delivered by the Presiding Judge. Only *one* Justice concurred. Appellants sought to correct these errors and infringements of their rights by a petition for rehearing, but were unsuccessful. They are compelled to apply to this Court for relief.

There has been a breakdown in the judicial process; a failure to exercise appellate jurisdiction. Our appeal involves more than the rights of the parties to this record. It is concerned with the integrity of the judiciary—the constitutional right of a litigant to a truthful, honest, and impartial decision in an appellate court. The circumstances are such as to warrant a full scale investigation.

Falsehoods and Half Truths

This opinion of the Presiding Judge is untruthful and misleading in each of the following respects:

First: It is stated that

> "In the instant case, the will restricts the use of trust property solely to charitable purposes."[3]

There is no such provision. At pages 98-99 of our Reply Brief we discuss the consequences of decedent's *failure* to use the word "charitable" or *prohibit* non-charitable activity.

[7] *Second:* There is a half truth suggesting that decedent's trust has, as its *sole purpose*,

[3]Op. vi:4-6.

". . . to contribute toward world peace by providing education for newspapermen. (And that) such a purpose is fundamentally educational."[4]

While providing education for newspapermen may be *one* of the purposes of the trust, it clearly is not the *sole object* because the stated objects of the trust are to do something to help toward the correction of *all* of the *conditions*[5] mentioned in the Preamble.

Third: It is falsely represented that, subject to funds being available, decedent's Trustees are *required* to establish a professorship.[5]

Fourth: There is a false denial that decedent made a grant of unlimited and uncontrolled discretion to select non-charitable objects or means.[6]

The clause providing for the bequest in trust shows on its face that there is an unlimited grant of discretionary power. Decedent states therein:

> "I have therefore long cherished the hope that I might be able to do *something* to help toward a correction of these conditions and *to that end* I hereby give and bequeath to (the Trustees) . . . [8] all of my estate and property, . . . *in trust*, for the *foregoing purposes*, . . .
>
> "(a) My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes;* and my said Trustees shall use and apply the net income derived from said trust estate for the maintenance of said Foundation." (C 4-5; A-6, 7.)

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[4]Op. iv:18-20.

[5]See Op. vi:12, where it is stated: "If the trust income is sufficient, the Trustees *are to establish a professorship.*" The will contains precatory words expressing decedent's "hope" and "expectation" that this *may* be done, but no legally binding obligation is imposed. See will at C 6:26-7:7 (A-9).

[6]Op. vi:19, "Contrary to appellants' argument, the Trustees are not given an unlimited and uncontrolled discretion to select non-charitable objects, employ non-charitable means, or use the income for non-charitable purposes."

Where a decedent makes such a bequest, in trust, for the correction of stated conditions with no provisions outlining the means to be employed or the activities in which the Foundation and the trust may engage, it follows as a matter of law that absolute discretion is conferred; that there is an unlimited power of selection. In such a case the law implements the trust by recognizing the existence of all power needed to enable the trustees to execute decedent's plan. The invalid discretionary power is granted by these words of the will and also by implication.

Fifth: It is falsely stated that the Founding Grant of the University will prevent use of this trust fund for private purposes.[7]

This is not a bequest to Stanford, to any University Department or Departments, or for the use or benefit of the University or any Department thereof. It is a trust to establish a Foundation and maintain it with net income of the estate. The terms of decedent's [9] trust prohibit her Trustees from making the estate a part of the University Endowment. It is to be held in trust for other purposes. Furthermore, Respondent has both charitable and non-charitable powers and has acted in both capacities on many occasions. It is presently conducting a research business on a fee contract basis through an affiliate known as "Stanford Research Institute."

Sixth: It is falsely stated that decedent intended to make a bequest to the governing body of the University.[8]

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[7] Op. vi:14. "Furthermore, under the terms of the Founding Grant, which is made applicable to *all bequests* to the Stanford Trustees by Section 10 of Article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes."

[8] Op. vii:18. "The testatrix intended to make a bequest to the governing body of Stanford University as the trial court found. The court's finding and distribution to the Board of Trustees of Stanford University was in accord with Sec. 10 of Article IX of the State Constitution . . .".

There is no such provision. The bequest is to the persons who are trustees and not to the Board in its corporate capacity. In twelve different clauses decedent refers to these Trustees as "*my* said Trustees", indicating her intent that they act for her benefit and not for the benefit of the University.[9] There is no provision requiring the Foundation to be established at Stanford or to engage in activities in any way connected with Stanford. This *may* in fact occur. There is no such legal requirement.

Seventh: Finally, there is the misleading statement that "bequests to promote peace and world understanding have been upheld in other jurisdictions."[10]

[10] No trust containing the broad and unlimited delegation of power here present, or seeking to accomplish promotion of peace and world understanding by other than exclusively educational means, has ever been sustained by any court or in any jurisdiction.

Suppression of Material Facts

The opinion is unfair, partisan, prejudicial, and a violation of constitutional rights in omitting reference to and in rendering a decision in disregard of the following material facts:

First: In failing to disclose that one condition mentioned in this will consists of handicaps imposed by differences in environment and language in various nations; that the decedent herself recognized and believed that those handicaps might be overcome "if the men and women whose vocation vests in them the power to mold public opinion make a conscious effort to that end."

Second: In failing to disclose and take judicial notice of the fact that these "men and women" constitute a large

[9] See Appellants' Opening Brief, pp. 38-41.

[10] Op. v:12.

group of persons, including Senators, Congressmen, political leaders, candidates for public office, advertising and public relations men, writers, lobbyists, Governors, members of State Legislatures; and Chairmen and Members of Foreign Affairs Committees of Congress and State Legislatures;

Third: In failing to disclose that decedent's Trustees, and her Foundation, are given express and implied authority, in seeking to correct designated con- [11] ditions, to engage in political action, dissemination of propaganda, collaboration with, aid, and support—in any appropriate manner—of any one, or more, or all of these persons and their respective organizations;

Fourth: In failing to disclose that such aid, collaboration, and support is, in its entirety, a non-charitable activity;

Fifth: In failing to disclose that another method authorized and permitted by decedent's will in aiding and supporting the men and women in opinion molding vocations is to prepare, publish, and distribute propaganda material for their use; that this is a non-charitable activity;

Sixth: In failing to disclose that a condition mentioned in the Preamble to decedent's will is lack of an understanding, by these opinion molders, of conditions in other nations; that this deficiency is one capable of being corrected, in whole or in part, by the publication and distribution of information bulletins and other materials on a commercial basis, to a list of paid subscribers; that this is a non-charitable activity;

Seventh: In failing to disclose that another condition mentioned in the Preamble to said will is the fact that the average citizen depends, for his knowledge of foreign affairs, on what appears in the newspapers; that this situation is capable of being corrected, in whole or in part, by decedent's Foundation serving as a research agency and

rendering assistance to commercial interests in the book publishing field; that this is a non-charitable activity;

[12] *Eighth:* In failing to disclose that the knowledge and understanding of newspaper editors and foreign correspondents in respect to conditions in foreign countries may be increased, developed, and made more effective by the commercial production, sale and distribution, of instructional material dealing with those subjects, without setting up or conducting any course of study for these people at a university; that the production and distribution of such instructional material is a non-charitable activity.

Denial of Due Process and Equal Protection of the Law in Substantive Matters

There has been a denial of due process and equal protection in the following respects:

First: By failing to restrict the determination of decedent's intent solely to the words of the will.

In *Estate of Young*, 123 Cal. 337, 344, 55 P. 1011, this Court held that the intention to be sought for is not that which existed in the mind of the testator, but that which is expressed in the language of the will.

In *Estate of Duesen*, 30 Cal. 2d 285, 182 P.2d 565, the rule was confirmed and it was held that there can be no reformation of a will even on the ground of accident or mistake.

The decisions of the District Courts of Appeal in *Estate of Sowash*, 62 Cal. App. 512, 217 P. 123; *Estate of Maloney*, 27 Cal. App. 2d 332, 80 P.2d 998; *Estate of Lyons*, 36 Cal. App. 2d 92, 96 P.2d 1018; *Pearson v. Hanson*, 96 Cal. App. 2d 394, 215 P.2d 529; and [13] *Estate of McAuliffe*, 132 Cal. App. 2d 476, 282 P.2d 541, are to the same effect.

This legal principle, which is a rule of property, is based on Sections 50 and 53 of the Probate Code requiring that

wills be *in writing*, and either duly witnessed, or entirely in the handwriting of the testator. Probate Code Section 105, prevents the use of extrinsic evidence except where uncertainty arises on the face of the document.

These established rules of law are applied uniformly to cases involving *other litigants*. Appellants have been denied the benefit of their protection and equal application in violation of the Fourteenth Amendment to the Constitution of the United States.

Second: The words of the will have not been taken in their ordinary and grammatical sense; technical words have not been taken in their technical sense—as required by Section 106 of the Probate Code.

These statutory requirements are applied uniformly and without discrimination in *other cases*. They have not been enforced or recognized in the case at bar. The constitutional rights of Appellants have been infringed in this respect."

"The Court disregarded the meaning of the word "*my*" in the phrase "*my* said Trustees", appearing in *twelve* different parts of the will (see Op. Br. 38-41); it disregarded the meaning and purpose of the "and/or" clause at A-11, indicating the possibility that there might be no acceptance by the Stanford Board in its corporate capacity, or participation by the University, with the result that substitute trustees might be appointed and act in a manner in no way connected with the University; it failed to hold that the reference to a "professorship" at A-9 was permissive and not legally binding, and that the words "hope" and "expectation" were used in a precatory sense; it failed to recognize the clear purpose and intent of decedent in using the plural form in respect to the words "conditions" and "purposes" to show that her Foundation and Trust Fund were to have multiple purposes—a purpose to help correct each of the conditions mentioned in the Preamble; it refused to give to the words "overcome", "mold" and "conscious effort" their true meaning, which discloses an intent to use propaganda to control public opinion and sources of information; and it failed to recognize the technical difference and distinction between the trustees of Stanford University and the corporate body known as "The Board of Trustees of the Leland Stanford Junior University."

[14] *Third:* Material parts of the will have been disregarded and treated as of no force or effect, in violation of Probate Code Section 102.[12] That code section is uniformly applied in *other cases*. Appellants have been denied the benefit of its protection.

Fourth: The rule expressed in Probate Code Sec. 104 that a clear and distinct bequest can not be affected "by any reasons assigned therefor, . . . or by inference or argument from other parts of the will", was disregarded.

An application of these rules and statutory requirements to the will would have established the invalidity of the trust and required a reversal. The failure to give Appellants the benefit and the equal protection [15] of those principles has deprived them of their property rights in violation of the Fourteenth Amendment.

Denial of Due Process and Equal Protection by Failure to Comply With Decisions of the Supreme Court

Due process and the equal protection requires District Courts of Appeal to recognize, and apply without discrimination, the precedents established by the decisions of this Court, and it imposes on this Court a corresponding duty to enforce compliance therewith. Appellants have been thus denied due process and the benefit of the equal protection of the laws in the following respects:

First: By a failure to enforce the rule in *Estate of Sutro*, 155 Cal. 727, under which decedent's trust is invalid;

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[12] All of the Preamble, except the clause referring to the need for education of newspaper editors and foreign correspondents, has been disregarded; the Court ignored the consequence of decedent's use of express terms in respect to the administration of her Trust Fund and her reliance on implied power as to the establishment of the Foundation and the execution of its charter purposes (see App. Reply Br. pp. 4-6); and it gave no effect to the expression of decedent's belief that the handicaps of environment and language could be overcome if men and women in opinion molding vocations make a conscious effort to that end (A-5).

Second: By a failure to apply the rule in *Morice v. The Bishop of Durham*, 9 Vesey Jr. 399, which, by virtue of Section 22.2 of the Civil Code, is the Rule of Decision;

Third: There was discrimination in failing to enforce the prohibition against non-charitable perpetuities set forth in Article XX, Section 9, of the State Constitution.

[20] *Evidence of Misconduct*

Appellants' Opening Brief was filed June 25, 1958; the brief of Respondent on September 19, 1958. This latter brief employed the technique of falsehood, half truth, and suppression of material facts, we find in the opinion of the Presiding Judge. Recognizing that implication and purpose in Respondent's brief, we filed a reply on December 22, 1958, exposing these untruths and demonstrating that the words of the will required an altogether different interpretation, and a reversal.

Shortly, thereafter, the case was set for hearing, being calendared for February 10, 1959. We filed an affidavit pursuant to Section 170 of the Code of Civil Procedure, seeking disqualification of Associate Justice Dooling on the ground of bias. His answer, filed January 21, 1959, included the following statement:

> "... I can act upon said appeal without being influenced *by any consideration* except the law as [21] I find it and the facts as revealed by the record on appeal."[13]

On January 23, 1959, we filed an Application for Findings on Appeal pursuant to Rule 23(a) and Section 956a of the Code of Civil Procedure. In reply, Respondent filed a general statement to the effect that the proposed findings were

[13] Answer of Maurice T. Dooling, Jr. to Claim of Disqualification at page 5.

unnecessary.[14] The matter was called for oral argument on February 10, 1959, when the Presiding Judge made the following statement:

> "Counsel, we are familiar with the briefs and the record in this matter, unless you have something new to add."[15]

Appellants did have "something new to add". They pointed out that this will contained words with a single meaning; that there was no right under Probate Code Section 102 to adopt any presumption in favor of alleged charity or against intestacy; that the recent opinion of the Court in *Estate of Rollins*, 163 A.C.A. 242, was not in point; that the Court had no power to reverse the decision in *Estate of Sutro*, 155 Cal. 707, or modify the rule there expressed; that there was no judicial power to alter the provisions of [22] this will under the guise of interpretation. In support of that proposition we cited the recent decision of the District Court of Appeal for the Third District in *Pearson v. Hanson*, 96 Cal. App. 2d 394.

The oral argument for Respondent was perfunctory, counsel deeming it unnecessary to reply.

When the opinion was filed, it disclosed partisanship, bias and discrimination on its face. It was based almost entirely on the brief of Respondent. There was no reference to substantial questions raised in our Opening Brief, our Reply Brief, or on oral argument. Quite obviously, everything had been worked out in advance.

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[14]See "Opposition to Appellants' Application for Findings on Appeal" at page 2: "The trial court made all requisite findings of fact (Rep. Tr. pp. 183-194) based upon the will and the extrinsic evidence introduced at the hearing. Those findings, and each of them, are correct, and no additional findings are required to support the judgment and decree of the trial court."

[15]Reporter's Transcript of Proceedings of February 10, 1959 at page 3.

The original typewritten opinion filed by the Presiding Judge was prepared with only one line for a concurring signature. Apparently it was determined that only one Associate Justice was willing to concur. Only two court days were available after the submission date, for preparing the opinion.[16] The care, time and study needed for the drafting of such a document indicate that more than two days' time was required.

The attitude and conduct of Associate Justice Dooling is a fact of importance. On January 21, 1959, this Justice stated, under oath, that he could act [23] "without being influenced by *any consideration*" except the law as he found it and the facts as disclosed by the record. Three weeks later he sat on the panel and after that he exhibited lack of freedom from influence by standing on the side lines as a spectator, observing everything, but doing nothing. Although unwilling to concur in the opinion he lacked the courage required for a dissent. Certainly he could have filed a dissenting opinion—unless the Presiding Judge rushed the matter through in so short a time as to afford no opportunity! If thus deprived of his right of dissent, the Justice could surely have dissented from the denial of the Petition for Rehearing filed two weeks later, and not acted on until March 18, 1959.

The evident haste in attempting to dispose of this matter is significant. In order to determine the extent to which there has been a departure from the usual course of judi-

[16] On Tuesday, February 10, 1959, the Court was in session most of the day for oral argument in this case and other matters on the calendar. Thursday, February 12, 1959—Lincoln's Birthday, was a holiday and all State Courts were closed. Saturday and Sunday, February 14 and 15, 1959, were also holidays and the opinion was filed on the morning of Monday, February 16, 1959. The only time left for preparing the opinion was Wednesday, the 11th, and Friday, the 13th.

cial business, we have examined the records of the Court for Division Two of this District, in Probate matters, with the following result:

The minimum time required by Justice Dooling for preparation of an opinion is sixty-three days;[17]

[24] The minimum as to Justice Draper, when there are two concurring signatures, is twenty-four days.[18]

The minimum for the Presiding Judge is *twenty-six days*.[19] His opinion in *Estate of Jane Lathrop Stan-*

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[17] *Tassi v. Tassi*, 160 Cal. App. 2d 680, decided May 21, 1958; opinion by Dooling, concurred in by Kaufmann and Draper, submitted February 10, 1958—100 days; *Estate of Gagliasso*, 150 Cal. App. 2d 65, decided April 11, 1957, opinion by Dooling, concurred in by Kaufmann and Comstock, pro tem., submitted January 16, 1957—85 days; and *Estate of Trainer*, 161 ACA 392, opinion by Dooling, concurred in by Kaufmann and Draper, decided June 17, 1958; submitted April 15, 1958—63 days.

[18] *Bernstein v. Rubin*, 152 Cal. App. 2d 51, decided June 24, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, submitted May 14, 1957—41 days; *Duncan v. Kahn*, 151 Cal. App. 2d 402, decided May 29, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, where oral argument was waived May 1, 1957 on filing of appellant's reply brief—28 days; *Estate of Tourny*, 154 Cal. App. 2d 501, decided October 18, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, submitted September 10, 1957—38 days; *Pollard v. Pollard*, 166 ACA No. 4 page 800, decided January 5, 1959, opinion by Draper, concurred in by Kaufmann and Dooling, submitted December 8, 1958—28 days; *Estate of Guigbout*, 155 Cal. App. 2d 814, decided December 9, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, submitted November 13, 1957—26 days; *In re Davis*, 162 ACA No. 4 page 658, decided August 8, 1958, opinion by Draper, concurred in by Kaufmann and Dooling, submitted July 15 1958—24 days; *Estate of Dow*, 167 ACA No. 4 page 799, decided February 9, 1959, opinion by Draper, concurred in by Kaufmann and Dooling, submitted January 13, 1959—27 days; *Estate of Anderson*, 166 ACA No. 1 page 37, decided December 11, 1958, opinion by Draper, concurred in by Kaufmann and Martinelli, pro tem., submitted November 12, 1958—29 days; and *Bundy v. Bank of America*, 167 ACA No. 1 page 1 decided January 8, 1959, opinion by Draper, concurred in by Kaufmann and Dooling, submitted December 9, 1958—30 days.

[19] *Estate of Herbert Edward Law*, 50 AC No. 9 page 279 (1 Civ. No. 17563, opinion by Kaufmann, concurred in by Draper and

ford, delivered in favor of the Stanford Board of Trustees required *ten days* but there were two concurring signatures (1 Civ. No. 17187).

[25] *Estate of Rollins*, 163 A.C.A. No. 2 p. 242 filed without the signature of the Presiding Judge, was under submission for seventeen days.

The Petition for Rehearing requested correction of seven deliberately false statements in the opinion; it referred to eight overt acts involving suppression of truth; it cited the failure to decide four substantial issues raised in the briefs; and it requested the Court to pronounce judgment in accordance with decisions of this Court and opinions in other Districts. The failure to recognize and grant relief on such an application can only be explained on the basis of misconduct.

The order of March 18, 1959, denying rehearing, was "By the Court", and signed by the Presiding Judge, but contained no counter-signature. In consequence, it is impossible to determine who concurred, whether any Associate Justice concurred, or what may have been the arrangement. There was no dissent.

Admissibility of Circumstantial Evidence

In cases involving malice, fraud, or other misconduct, the law admits proof based on circumstantial evidence and the adoption of inferences justified thereby. We cite the following authority in support of that proposition.

Dooling; submitted November 13, 1957 and decided December 9, 1957—26 days; and *James v. Pawson*, 162 ACA No. 5, page 798, decided August 13, 1958, opinion by Kaufmann, concurred in by Dooling and Draper, where oral argument was waived on filing appellant's reply brief. An exception exists in *Estate of Coffey*, 161 ACA No. 2 page 298, submitted June 9, 1958, and decided June 11, 1958, with opinion by Kaufmann, concurred in by Dooling and Draper, where there was a matter pending at Los Angeles which depended on the ruling of the court here.

Davis v. Hearst, 160 Cal. 143, 155, 116 P. 530, 540, was a libel case requiring proof of malice. The Court said:

> "As to the nature of the evidence as has been said, it may be direct (or express, as the Code [26] names it), going to the declarations, acts, and conduct of the defendant, showing personal ill will toward the plaintiff; but it will more usually be indirect or inferred (the implied malice in fact of the Code definition), and to this end of proving the malice inferentially all legitimate evidence is admissible bearing upon the general course of conduct of the defendant toward the plaintiff, the internal evidence furnished by the character of the libel, and any other specific facts and circumstances not in direct proof of the malice, but from which the existence may be logically inferred, herein including the circumstance, if it be found to exist, of wanton recklessness and heedlessness of plaintiff's rights."

See also *Blank v. Coffin*, 20 Cal. 2d 457, 460, 126 P.2d 868, at 870:

> "An inference is a conclusion as to the existence of a material facts that a jury may properly draw from the existence of certain primary facts . . .
>
> "It is not always possible for a party to a lawsuit to introduce evidence directly bearing upon the existence of a fact that he is attempting to prove. The evidence available to him may serve only to establish the existence of certain primary facts that are logically connected with the material fact. If a jury can reasonably infer from these primary facts that the material fact exists, the party has introduced sufficient evidence to entitle him to have the jury decide the issue."

Badges of Fraud

[27] In cases involving conveyances or transfers in fraud of creditors, the use of circumstantial evidence is common. Overt acts justifying an inference of fraud are termed

"Badges of Fraud." The discussion of that subject at 37 Corpus Juris Secundum, page 922, et seq. includes reference to the following:

> "Badges of fraud are suspicious circumstances which, if unexplained, warrant an inference of fraud."

Among the "Badges" mentioned are:

Transactions not in the usual course or mode of doing business;

Concealment; failure to record a conveyance; unusual delay in recording it;

Secrecy and haste in consummating a transaction;

Falsehood; concealment of essential facts.

Comparison of the Misconduct with Facts in Other Cases

We are entitled to introduce, for purposes of comparison, evidence concerning other cases where misconduct is established by the records. Pursuant to Section 956a of the Code of Civil Procedure, and Rule 23(b), Appellants apply for leave to introduce the following into the record for that purpose; and as additional evidence in support of this petition:

Case No. 1: Estate of James G. Fair, Deceased, involving payment of a $410,000.00 bribe to former [28] Justice Frederick W. Henshaw to secure granting of a rehearing and a decision invalidating the trust created by the will of the late Senator Fair. This proceeding exhibits the following characteristics:

(a) Use of a plausible but dishonest concurring opinion to justify invalidation of the trust;

(b) Admission on the part of the children of decedent in respect to their participation in the fraud, by the compromise and settlement of a superior court action brought to recapture the property distributed as a result of the fraud.

The documentary evidence offered consists of:

(a) February 26, 1900, opinions in *Estate of Fair*, reported at 60 P. 442;

(b) April 30, 1901, opinions in *Estate of Fair*, reported at 132 Cal. 523, 64 P. 1000;

(c) Excerpts from the record in Action No. 97539, San Francisco Superior Court, filed May 15, 1919, and entitled "Wesley E. Crothers, et al., Plaintiffs, v. Theresa A. Oelrichs, et al., Defendants", as set forth in the affidavit filed herewith;

(d) Report of J. R. Densmore, Director General of United States Employment Bureau, appearing at page 7, in Nov. 23, 1918, issue of San Francisco Examiner.[20]

[29] *Consequence of the fraud:* The bulk of an estate valued at $12,228,998.07 was distributed on the ground of intestacy to decedent's son, Charles L. Fair, and his daughters, Virginia Fair (Vanderbilt) and Theresa A. Oelrichs. These children, and their successors in interest, were the parties who compromised and settled the recapture suit.

Case No. 2: Estate of James L. Flood, Deceased, involving conduct of George H. Buck, former Judge of the Superior Court of San Mateo County, in arbitrarily taking from the jury, the case of Constance May Gavin, claiming

[20]States that George Knight, attorney for Charles Fair, a son of the decedent, James G. Fair, made payments through W. J. Dingee, a friend of Justice Henshaw, whereby $10,000.00 would be paid on the granting of a rehearing and decedent's heirs would pay the further sum of $400,000.00 if the final decision was favorable. That Herman Oelrichs, husband of a daughter of decedent, signed a note in Dingee's favor for $400,000.00 as attorney for his wife, depositing the note for safekeeping with W. F. Herrin, of the Southern Pacific; that the payments were made by a series of checks of $50,000.00 each, drawn by S. G. Murphy, President of First National Bank, extending over several weeks; that corroboration was obtained from F. A. Losh, bookkeeper for Dingee.

rights of inheritance as the illegitimate daughter of decedent; and in thereafter denying motion for a new trial. This case exhibits the following characteristics:

(a) Partisanship, bias, and prejudice of such character as to indicate influence;

(b) Continued domination of the same influence on motion for a new trial;

(c) Probable collusion between counsel and the Court in respect to these proceedings.

The documents offered consist of:

Reporter's Transcript of proceedings before Superior Judge George H. Buck in SF Case No. 14581 in the files of this Court;[21]

[30] Opinion in *Estate of Flood*, 217 Cal. 763, 21 P.2d 579.

Consequence of the fraud: The claimant, Constance May Gavin, was deprived of her right to a two-ninths interest in an estate appraised at $8,565,507.85. After a reversal of the judgment, on appeal, it is reported that the claim was settled by payment of $1,025,000.00.[22]

Case No. 3: People v. Eugene E. Schmitz, an opinion invalidating the indictment against Schmitz during the San Francisco graft prosecutions of 1906-08 on the ground that the Court was unable to take judicial notice of the fact that he was the mayor of the City of San Francisco.

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[21] A recital of the events culminating in the action of Superior Court Judge Buck in taking this case from the jury, is set forth in the book by Willa Okker Iverson, "The Strange Case of Constance Flood", at pages 355-356, it being indicated that at the conclusion of the testimony, counsel for decedent's widow handed the Judge a memorandum which he proceeded to read and act upon without prior notice to counsel, and without receiving oral argument. By such arbitrary action, the jury was instructed to bring in the verdict set aside by the opinion of this Court in *Estate of Flood*, 217 Cal. 763, 21 P. 2d 579.

[22] Iverson Book, page 372.

This case exhibits the following characteristics:

(a) Use of an opinion "By the Court" to avoid disclosing the identity of the Justices concurring in the decision;

(b) The technique of an intellectually dishonest opinion, to support discrimination favoring persons with power and influence.

The evidence offered consists of:

(a) Opinion in *People v. Schmitz*, reported at 7 Cal. App. 369-375;

[31] (b) History and background of the San Francisco graft prosecutions, which are a matter of such general knowledge as to be the subject of judicial notice.[23]

Consequence of the fraud: Crippling of the San Francisco graft prosecutions; delay in the trial of cases; a factor contributing to the eventual dismissal of all graft indictments except the one against Abraham Ruef.

Case No. 4: Denicke v. Anglo California National Bank, involving use of an intellectually dishonest opinion, filed without countersignature during an adjournment of court, as a device (a) to throw a case out of court and (b) to evade the duty to exercise appellate jurisdiction.

In this matter, the Clerk entered a "decree" in violation of court rules; the "opinion" was published in 141 F.2d 285, as an opinion of the Court, without disclosing irregularity of the signature clause; a false record was certified on peti-

[23]One of the best works on this subject is undoubtedly "Boss Ruef's San Francisco—The Story of the Union Labor Party, Big Business, and the Graft Prosecution," by Professor Walton Bean, Department of History, University of California (Berkeley). Research materials for the book, which received the Commonwealth Club non-fiction award in 1952, are deposited in the Bancroft Library at Berkeley.

tion for certiorari, and there was no exercise of appellate jurisdiction by either the Circuit Court of Appeals or the Supreme Court.

The documents offered consist of:

(a) Published opinion in *Denicke v. Anglo California National Bank*, at 141 F.2d 285;

[32] (b) Petition for Writ of Certiorari filed in the Supreme Court as October Term 1944 Case No. 155, which discloses the irregularities mentioned.

Consequence of the misconduct: Twenty-three present and former Directors of the Anglo California National Bank were released from liability for negligence, fraud, and misconduct, in respect to losses totaling $4,029,449.52[24] It became impossible by deposition and use of federal process to investigate misconduct affecting officers of the Reconstruction Finance Corporation and other federal agencies.

Case No. 5: People v. Abraham Ruef, involving an irregular order granting a hearing after decision by the District Court of Appeal. Justice Henshaw signed the order before the opposing brief of the Attorney General had been filed, and then left the state. Three other Justices concurred subsequently. The order was held invalid because of the lack of a sufficient number of valid concurring signatures.

The important characteristic of this case is the fact that it seems to be the device relied on by Circuit Judge Healy in *Denicke v. Anglo California National Bank* in filing his

[24] Mortimer Fleishhacker, Herbert Fleishhacker, Mortimer Fleishhacker, Jr., George I. Cochran, Philip S. Baker, R. D. Brigham, Walter E. Buck, Walter A. Haas, Paul E. Hoover, William F. Humphrey, Samuel Kahn, Victor Klinker, William B. Reis, Paul Shoup, Leon Sloss, Jr., Louis Sutter, Alfred B. Swinerton, T. C. Tilden, Joseph O. Tobin, Willard O. Wayman, Irene L. Berg, Executrix of the will of William H. Berg, Deceased, R. Stanley Dollar and Frank Moss.

"opinion" without countersignatures during a court adjournment. In respect to the [33] matter of *People v. Ruef*, we offer the opinion recorded at 14 Cal. App. 620-632.

Case No. 6: Opinions of former Circuit Judge Martin T. Manton, involving the device of plausible but dishonest opinions, concurred in by other justices, as a means of soliciting and obtaining bribes. The important characteristic of the *Manton* Cases is the extent to which such opinions may be used as a device to defraud litigants and deprive them of their constitutional rights. The decisions offered in respect to this matter are the following:

(a) *United States v. Manton*, 107 F.2d 834, affirming conviction of Circuit Judge Manton on charge of conspiracy to defraud and obstruct the administration of justice;

(b) *Art Metal Works, Inc. v. Abraham & Straus, Inc.*, 61 F.2d 122, involving bribes totaling $15,000.00 (107 F.2d 840);

(c) *Smith v. Hall*, 83 F.2d 217, involving $75,000.00 bribe;

(d) *General Motors Corp. v. Preferred Electric & Wire Corp.*, 79 F.2d 621; and *Lotsch v. Kelley*, 86 F.2d 613, involving demands for bribes totaling $25,000.00.

Consequences of Misconduct in the Peck Case

Distribution of property having a value in excess of $500,000.00;

An opportunity for textbook publishers and other commercial interests to profit financially from estab- [34] lishment of a non-charitable research affiliate under decedent's will;

Use of her Foundation to disseminate propaganda, control the press, and influence public opinion;

Exercise of financial control over her Foundation by one of the large tax-exempt funds seeking this objective.

The abuses possible are practically unlimited. During the second session of the 83d Congress, the House of Representatives investigated the monopoly power and influence exerted by some of the large tax-exempt foundations over education and public affairs.[25]

Statement of the Federal Question

In consequence of the denials of due process and equal protection of the laws in respect to both procedural and substantive matters, Appellants, and each [35] of them, have been deprived of rights, privileges and immunities conferred upon them by the Fourteenth Amendment to the Constitution of the United States. They hereby give notice of their intention to enforce and protect those rights pursuant to Title 28, United States Code, Section 1257, in the event that appropriate relief cannot otherwise be obtained. Because of these denials of constitutional rights, Appellants respectfully submit that an appeal lies to the Supreme Court of this state, as of right, from the decision of the District Court of Appeal.

[25] House of Representatives Special Committee to Investigate Tax Exempt Foundations (the Reece Committee) established by H. Res. 213, See Report of Reece Committee p. 17: "The power of the individual large foundation is enormous: It can exercise various forms of patronage which carry with them elements of thought control. It can exercise immense influence on educational institutions . . . It is capable of invisible coercion through the power of its purse . . . It can play a powerful part in the determination of academic opinion, and, through this thought leadership, materially influence public opinion . . .

"The far reaching power of the large foundations and of the interlock, has so influenced the press, the radio, and even the government that it has becomes extremely difficult for objective criticism of foundation practices to get into news channels without having first been distorted, slanted, discredited, and at times ridiculed. Nothing short of an unhampered Congressional investigation could hope to bring out the vital facts; and the pressure against Congressional investigation has been almost incredible."

[36] *Public Importance of the Misconduct Issue*

Senate Constitutional Amendment No. 14, now pending in the Legislature, will add a new Section 10b to Article VI, to include the following:

> "A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office . . . The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing . . . If at such hearing it finds good cause therefor, it may recommend to the Supreme Court the removal or retirement of the justice or judge.
>
> "Upon application of the justice or judge the Supreme Court shall review the record of the hearing before the commission on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper . . ."

This proposal is supported by the Judicial Council and the State Bar of California and has the endorsement of two Justices of this Court as members of the Council.[27]

Such Amendment, if adopted, will protect the public interest by providing for removal, in proper cases, without resort to the cumbersome procedure of impeachment. However, it will not protect the rights of litigants who must continue to rely on a full exercise [37] of this Court's power of transfer under Article VI, Section 4c, of the Constitution.

Grounds Relied on in Support of Petition

Appellants rely on each of the following ground in support of their Petition for a Hearing and Decision by the Supreme Court:

[27] 17th Biennial Report of Judicial Council of California to the Governor and the Legislature, dated January 5, 1959, at pp. 20, 24-25.

First: Denial of due process and equal protection of the laws in procedural matters, as above cited, in the District Court of Appeal;

Second: Denial of due process and equal protection in that Court in respect to each of the substantive matters cited;

Third: Misconduct of the District Court of Appeal in delivering a deliberately false and misleading opinion;

Fourth: The need for action on the part of this Court in delivering an opinion prescribing minimum standards for judicial opinions to be observed in the District Courts of Appeal for protection of the rights of litigants, and to enable this Court to appropriately exercise its power of review;

Fifth: To enforce compliance with the decision of this Court in *Estate of Sutro*, 155 Cal. 727, with the rule in the *Bishop of Durham* case, binding as a precedent under Section 22.2 of the Civil Code, and with the provisions of Article XX, Section 9, of the State Constitution;

[38] *Sixth:* To resolve and settle the conflict existing between the decision and action of the District Court of Appeal in the within case, and the decisions in other Districts cited at page 16 of this Petition;

Seventh: To decide the substantial legal issues cited at pages 16-17 of this Petition;

Eighth: To lay down standards governing interpretation of wills in cases involving alleged charitable trusts, to prevent the abuse of power which has occurred in the case at bar;

Ninth: To re-examine this Court's decision in *Collier v. Lindley*, 203 Cal. 641, for the purposes set forth at page 18 of this Petition;

Tenth: To deliver an opinion in respect to the legal limitations on the presumption favoring attempted gifts to

charity to the end that there may be no confusion respecting the standards to be applied in those situations;

Eleventh: To enforce the public policy declared in the perpetuity clause of the State Constitution (Article XX, Sec. 9), according to its intent and purpose, under which decedent's trust is void in its entirety;

Twelfth: And, finally, to secure to these Appellants their constitutional right to a full and complete exercise of appellate jurisdiction, a truthful opinion based on the law and the record, and a reversal of the decrees of the trial court, as the law requires.

[39] We respectfully submit that this petition should be granted on each of the grounds stated, and that the vote in its favor should be unanimous.

Dated, San Francisco, California,
March 25, 1959.

AARON M. SARGENT,
Attorney for Appellants and Petitioners.

DOYLE & CLECAK:
Of Counsel.

Order Due April 17, 1959

ORDER DENYING HEARING

After Judgment by District Court of Appeal
1st District, Division 2, Civil No. 18130

In the Supreme Court of the State of California
IN BANK

Estate of Peck, Deceased
Sargent et al

v.

The Board of Trustees of the
Leland Stanford Junior University
Spence, J. did not participate herein

Appellants' petition for hearing DENIED.

Gibson *Chief Justice*

Filed Apr. 15, 1959

WILLIAM L. SULLIVAN, *Clerk* By R. J. BELL, *S. F. Deputy*